

Estate of Roger Owensby vs. City of Cinti.
October 17, 2003

PATRICK E. CATON

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

- - - - -
ESTATE OF ROGER D. :
OWENSBY JR., et al., :
:
Plaintiffs, :
vs. : Case No. 01-CV-769
: (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
:
Defendants. :
- - - - -

Videotaped deposition of PATRICK EDMUND

CATON, a defendant herein, called by the plaintiffs
for cross-examination, pursuant to the Federal Rules
of Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Friday, October 17, 2003, at a.m.

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<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. Frederick M. Morgan, Jr. Esq. Helmer, Martins & Morgan Co. LPA Suite 1900, Fourth & Walnut Centre 105 East Fourth Street Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. The Helbling Law Firm, L.L.C. 3672 Springdale Road Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Lynne Marie Longtin, Esq. Rendigs, Fry, Kiely & Dennis 900 Fourth & Vine Tower One West Fourth Street Cincinnati, Ohio 45202-3688 Phone: (513) 381-9200</p> <p>16 On behalf of Defendants City of Cincinnati, Darren Sellers, Jason Hodge:</p> <p>18 Geri Hernandez Geller, Esq. Assistant City Solicitor and Julie F. Bissinger, Esq. Chief Counsel Department of Law Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202 Phone: (513) 352-3346</p>	<p>1 S T I P U L A T I O N S</p> <p>2 It is stipulated by and among counsel for the</p> <p>3 respective parties that the deposition of PATRICK</p> <p>4 EDMUND CATON, a defendant herein, called by the</p> <p>5 plaintiffs for cross-examination, pursuant to the</p> <p>6 Federal Rules of Civil Procedure, may be taken at</p> <p>7 this time by the notary; that said deposition may be</p> <p>8 reduced to writing in stenotype by the notary, whose</p> <p>9 notes may then be transcribed out of the presence of</p> <p>10 the witness; and that proof of the official</p> <p>11 character and qualifications of the notary is</p> <p>12 expressly waived.</p> <p>13 - - -</p>																		
Page 3	Page 5																		
<p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellen and Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus & Marks, LLC 915 Cincinnati Club Building 30 West Garfield Place Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 Also present:</p> <p>8 Richard W. Grubb, Videographer</p> <p>9 Lisa Damstrom, Law Clerk Helmer, Martins & Morgan Co., L.P.A.</p> <p>11 Wendy M. Weller, Paralegal Buckley, King & Bluso</p> <p>12 Mr. Roger Owensby</p> <p>13 Mrs. Brenda Owensby</p> <p>14 Mr. Shawn Owensby</p> <p>15 Victor N. Spellen</p> <p>17 - - -</p>	<p>1 I N D E X</p> <p>2 Examination by: Page</p> <p>3 Mr. Martins 6</p> <p>4 Ms. Longtin 232</p> <p>5 Mr. Martins 238</p> <p>6 - - -</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9</p> <table border="0"> <tr> <td>Deposition Exhibit 28</td> <td>22</td> </tr> <tr> <td>Deposition Exhibit 29</td> <td>30</td> </tr> <tr> <td>Deposition Exhibit 30</td> <td>43</td> </tr> <tr> <td>Deposition Exhibit 31</td> <td>65</td> </tr> <tr> <td>Deposition Exhibit 32</td> <td>115</td> </tr> <tr> <td>Deposition Exhibit 33</td> <td>186</td> </tr> <tr> <td>Deposition Exhibit 34</td> <td>191</td> </tr> <tr> <td>Deposition Exhibit 35</td> <td>194</td> </tr> <tr> <td>Deposition Exhibit 36</td> <td>207</td> </tr> </table> <p>14</p> <p>15 - - -</p>	Deposition Exhibit 28	22	Deposition Exhibit 29	30	Deposition Exhibit 30	43	Deposition Exhibit 31	65	Deposition Exhibit 32	115	Deposition Exhibit 33	186	Deposition Exhibit 34	191	Deposition Exhibit 35	194	Deposition Exhibit 36	207
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<p style="text-align: right;">Page 34</p> <p>1 Marine Corps, active duty from September of 1990 2 through March 15 of 1996? 3 A. 1995. It -- it should -- 4 Q. Oh, is it '95? 5 A. Where's the -- where is the closing date? 6 Q. It says date of discharge -- see date of 7 discharge is about three -- four lines from the 8 bottom? 9 A. One, two, three. That's incorrect. That 10 should be -- that's my mistake. It should read 11 1995. 12 Q. All right. So about four and a half 13 years? 14 A. With OCS that'd make it an even five. 15 That -- those -- those dates would culminate my 16 active duty service in the fleet. 17 Q. When you say OCS, does that stand for 18 Officer Candidate School? 19 A. That's correct. 20 Q. So you started off as an enlisted man? 21 A. No, I did not. I started off on a college 22 program called Platoon Leaders Course. 23 Q. In any event, you received a discharge in 24 March of '95?</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Yes. 2 Q. Go to the next page, C001631. That is the 3 oath that you took to become a Cincinnati police 4 officer on May 30, 1997, correct? 5 A. Correct. 6 Q. And as I understand it, you began at the 7 police academy as a recruit in January of '97? 8 A. That is correct. 9 Q. What did you do between May or -- or March 10 of '95 and January of '97? 11 A. I re-- I worked for about a year -- I took 12 some time off once I got out of the service and 13 traveled a little bit. And then I worked for about 14 a year as a ball bearing salesman for a local 15 industrial warehouse. 16 Q. What company? 17 A. Motion Industries. 18 Q. Here in Cincinnati? 19 A. Actually, they were located -- my office 20 was located in Middletown. 21 Q. If you recall, about how much time did you 22 take off and do some traveling and then when did you 23 start working for the ball bearing company? 24 A. I recall I took off about three, four</p>
<p style="text-align: right;">Page 35</p> <p>1 A. That's correct. 2 Q. And at that time you held the rank of 3 captain? 4 A. That's correct. 5 Q. And your service in the Marine Corps had 6 been in armor? 7 A. That was my primary MOS, that's correct. 8 Q. I take it you were discharged with an 9 honorable discharge? 10 A. Yes. I went from active duty, and then I 11 reverted to the IRR and I had served some time in 12 the active reserves. 13 Q. But when you went off of active duty -- 14 A. It was an honorable discharge. 15 Q. -- your discharge was an honorable 16 discharge? 17 A. That's correct. 18 Q. Are you still in the IRR? 19 A. That is correct. 20 Q. For the record, IRR stands for Individual 21 Ready Reserve? 22 A. That's correct. 23 Q. While you were in the Marine Corps, did 24 you receive CPR training?</p>	<p style="text-align: right;">Page 37</p> <p>1 months, and then I worked for the company for about 2 a year, roughly. 3 Q. The next page is the continuous service 4 record. It has a Bates number of 1632. We see that 5 January 5, '97 you enroll as a police recruit; June 6 of '97, promoted to police officer and transferred 7 to District 4; February 4 of 2001, transferred to 8 Impound Unit? 9 A. That is correct. 10 Q. And then December 2 of '01, transferred to 11 unit -- to District 1; is that right? 12 A. That's correct. 13 Q. After District 1, if we were to continue 14 your service record, what would we have here? 15 A. I was terminated. 16 Q. And when was that? 17 A. Exact date, I believe, was early March of 18 2003. 19 Q. At the time that you were terminated, 20 though, you were assigned to District 1? 21 A. No. I had been temporarily assigned back 22 to the Impound Unit. 23 Q. So -- 24 A. But it doesn't show as a transfer, because</p>

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1 A. Yes.
2 Q. So if there were any founded complaints,
3 you would be notified?
4 A. I believe when the officer is notified
5 either way. And if -- if the officer makes any
6 testimony, the officer receives a transcript of what
7 the findings of OMI were.
8 Q. Okay. Well, then that gets back to my
9 original question, that when a -- when a citizen
10 files a complaint --
11 A. Then --
12 Q. -- is the officer notified?
13 A. And I'm qualifying that. When the officer
14 is notified and testifies, he receives the finding.
15 If he -- for example, I don't know if Miss --
16 Miss Byrd -- I can't recall if Mrs. Byrd registered
17 a complaint or not with regard to this incident. I
18 don't recall receiving any notification or giving
19 any testimony. That's not to say I didn't do it. I
20 just don't recall it.
21 Q. Do you -- directing your attention to
22 page three of the article --
23 A. Uh-huh.
24 Q. -- second full paragraph, it says "Officer

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1 Q. When you say "this incident," what
2 incident are you referring to?
3 A. I'm referring to the Owensby incident.
4 Q. What about Mr. Smiley?
5 A. I -- I wasn't complained on for excessive
6 use of force. Officer George was complained on for
7 excessive.
8 Q. Okay. The -- going back to that
9 paragraph, it says, the -- the second sentence of
10 the paragraph says "Four of the complaints alleged
11 Officer Caton used obscenities and in one case used
12 the n-word."
13 A. That is not --
14 Q. Do you know if that's accurate or not
15 accurate?
16 A. I have been accused of that, but that
17 particular incident, my partner was black and heard
18 the entire conversation and said that never
19 happened.
20 Q. And -- and you deny it, I take it?
21 A. And I deny it.
22 Q. Is there anything else, as you look
23 through the article, that you believe is inaccurate,
24 beyond what you've already stated?

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1 Caton was named in nine citizen complaints" filed
2 with OMI.
3 A. Uh-huh.
4 Q. Do you have any knowledge as to whether or
5 not that is accurate?
6 A. I believe that's accurate, but what I
7 don't believe is accurate is that -- is that I think
8 they ranked me as the seventh most complained-on
9 officer in the city of Cincinnati, and that's not
10 true. I saw the article that said that. I know
11 officers are complained on -- complained on more
12 times than I do -- than I have been and they --
13 Q. Well, do you know that there are six other
14 officers that are complained on more than you are?
15 A. At least six other officers.
16 Q. Okay.
17 A. And that I carry the most complaints for
18 excessive use of force, that's not accurate, either.
19 This -- this incident was actually the first
20 incident that an accusation of excessive use of
21 force was used. The only -- the only other incident
22 that I can possibly recall where excessive force was
23 used or -- or complained about was the threat of
24 excessive force when I drew my weapon.

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1 MR. HARDIN: Objection.
2 You may answer.
3 A. I'm going to have to reread it. I'm going
4 to have to -- there's quite a few inaccuracies here,
5 and they don't tell the full story and they don't --
6 the accurate -- it is completely misleading.
7 Q. Are you currently working?
8 A. No, I am not.
9 Q. Since leaving the Cincinnati police force,
10 have you held any jobs?
11 A. No, I have not.
12 MR. MARTINS: We've been going about an
13 hour and a half. Why don't we take a short
14 break.
15 VIDEOGRAPHER: Going to change to
16 videotape number 2, Mr. Martins.
17 Off the record.
18 (Recess taken: 11:19 a.m. - 11:30 a.m.)
19 VIDEOGRAPHER: We're on the record. This
20 is videotape number 2 for this witness.
21 BY MR. MARTINS:
22 Q. Sir, on November 7th you had on your
23 possession a cell phone; is that right?
24 A. That is correct.

17:00:39 1 MR. HARDIN: Caton.

17:00:39 2 VIDEOGRAPHER: Sorry. Mr. Caton, you have
17:00:39 3 a right to review this videotape deposition
17:00:39 4 prior to its being shown to a court or jury.
17:00:39 5 Will you waive that right?

17:00:39 6 THE WITNESS: No.

17:00:40 7 VIDEOGRAPHER: We're off the record. The
17:00:42 8 time showing is 5:04 p.m.

17:00:42 9 MR. MARTINS: I take it you also want
17:00:49 10 signature on the deposition?

17:00:51 11 MR. HARDIN: Yes. Yes.

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PATRICK EDMUND CATON

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(Deposition concluded.)

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